

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Wassim Abedrabbo	Team: Squad #9	CCRB Case #: 201805989	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 07/11/2018 9:30 PM, Thursday, 07/12/2018 12:00 AM	Location of Incident: Shore Avenue and 154th Street, Sutphin Boulevard and Arlington Terrace	Precinct: 103	18 Mo. SOL 1/11/2020	EO SOL 1/11/2020	
Date/Time CV Reported Mon, 07/23/2018 1:09 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 07/23/2018 1:09 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Gregory Gromling	14995	956704	103 PCT
2. POM Michael Boudouris	13949	955764	103 PCT
3. SGT Justin Ellis	02784	944536	103 PCT
4. POM Daniel Ward	21743	947596	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Justin Ellis	Abuse: On July 11, 2018, at 154th Street and Shore Avenue in Queens, Sergeant Justin Ellis stopped the vehicle in which § 87(2)(b) was an occupant.	
B.SGT Justin Ellis	Abuse: On July 11, 2018, at 154th Street and Shore Avenue in Queens, Sergeant Justin Ellis questioned § 87(2)(b)	
C.POM Michael Boudouris	Abuse: On July 12, 2018, at Sutphin Boulevard and Arlington Terrace in Queens, Police Officer Michael Boudouris stopped the vehicle in which § 87(2)(b) was an occupant.	
D.POM Gregory Gromling	Abuse: On July 12, 2018, at Sutphin Boulevard and Arlington Terrace in Queens, Police Officer Gregory Gromling stopped the vehicle in which § 87(2)(b) was an occupant.	
E.SGT Justin Ellis	Abuse: On July 12, 2018, at Sutphin Boulevard and Arlington Terrace in Queens, Sergeant Justin Ellis questioned § 87(2)(b)	
F.SGT Justin Ellis	Abuse: On July 12, 2018, at Sutphin Boulevard and Arlington Terrace in Queens, Sergeant Justin Ellis threatened to arrest § 87(2)(b)	
G.SGT Justin Ellis	Abuse: On July 12, 2018, at Sutphin Boulevard and Arlington Terrace in Queens, Sergeant Justin Ellis searched the vehicle in which § 87(2)(b) was an occupant.	
§ 87(4-b) § 87(2)(g)		

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b) § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b) § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b) § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b) § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b) § 87(2)(g)	[REDACTED]	[REDACTED]

Case Summary

On July 23, 2018, § 87(2)(b) filed this complaint with the CCRB via the online complaint form.

On July 11, 2018, at approximately 9:30 p.m., § 87(2)(b) was pulled over in his white four-door Jaguar XF at the intersection of 154th Street and Shore Avenue in Queens, by Sergeant Justin Ellis and Police Officer Gregory Gromling, both of the 103rd Precinct (**Allegation A: Abuse of authority – Vehicle stop**, § 87(2)(g)). During the stop, § 87(2)(b) informed Sgt. Ellis that he was a peace officer with § 87(2)(b); after which, Sgt. Ellis asked § 87(2)(b) if he had a firearm in the vehicle (**Allegation B: Abuse of authority – Question**, § 87(2)(g)). Minutes after being stopped and presenting his § 87(2)(b) identification card, § 87(2)(b) was allowed to leave without being issued a summons.

On July 12, 2018, at approximately 11:30 p.m., § 87(2)(b) was pulled over once again in his same vehicle at the intersection of Sutphin Boulevard and Arlington Terrace in Queens, by Police Officer Gregory Gromling and Police Officer Michael Boudouris, also of the 103rd Precinct (**Allegations C and D: Abuse of authority – Vehicle stop**, § 87(2)(g)). Shortly after, Sgt. Ellis and Police Officer Daniel Ward arrived at the location as back up. During the stop, Sgt. Ellis allegedly asked § 87(2)(b) about a gun charge that was on his arrest history (**Allegation E: Abuse of authority – Question**, § 87(2)(g)). Sgt. Ellis ultimately searched § 87(2)(b) vehicle, after allegedly telling him that he would be arrested if he did not exit the vehicle (**Allegation F: Abuse of Authority – Threat of Arrest**, § 87(2)(g)) (**Allegation G: Abuse of Authority – Vehicle search**, § 87(2)(g)). After the search of the vehicle, § 87(2)(b) was once again released without being issued a summons.

§ 87(4-b) § 87(2)(g)

Body worn camera (BWC) footage of the July 12, 2018 vehicle stop from PO Boudouris' and PO Gromling's BWCs were obtained by the investigation (**Board Review 01**) (**Board Review 02**). No additional video footage was obtained in relation to this investigation.

Findings and Recommendations

Allegation (A) Abuse of Authority: On July 11, 2018, at 154th Street and Shore Avenue in Queens, Sergeant Justin Ellis stopped the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that § 87(2)(b) was not issued a summons as a result of this vehicle stop.

During his CCRB statement, § 87(2)(b) stated that just before his vehicle was stopped at 154th Street and Shore Avenue in Queens, he came to a full stop at a stop sign at the intersection of 154th Street and Yates Avenue, and then signaled before turning left onto 154th Street (**Board Review 03**). After driving to the next block, he signaled once again before turning left onto Shore Avenue. After being pulled over, Sgt. Ellis told § 87(2)(b) that he was pulled over because he did not signal when turning.

In his initial phone statement, § 87(2)(b) stated that he was not informed as to why the officers stopped his vehicle on July 11, 2018 (**Board Review 04**).

§ 87(2)(a) Gen.Mun. §50-H(3)

During his CCRB statement, Sgt. Ellis stated that on the evening of July 11, 2018, he learned of a “shots fired” incident via a radio call (**Board Review 05**). The shots fired occurred before the

stop of § 87(2)(b) vehicle; however, at the time of the vehicle stop, he only knew the time and location of the incident.

Sgt. Ellis added that approximately 10 to 15 minutes after the shots fired radio call, § 87(2)(b) vehicle was stopped at 154th Street and Shore Avenue, approximately one block from where the shots fired occurred. § 87(2)(b) vehicle was stopped because he observed him commit a traffic infraction. He did not recall what the traffic infraction was.

PO Gromling stated that just minutes before the vehicle stop, a radio call came over regarding shots being fired within a half mile radius of 154th Street and Shore Avenue (**Board Review 06**). The officers stopped § 87(2)(b) vehicle because he was driving in the area close to where the shots were fired, shortly after the incident occurred. There were no additional reasons as to why the officers stopped § 87(2)(b) vehicle. At the time of the stop, the officers only knew where the shots were fired and how many shots were fired. The notification of the incident was generated by a “shot spotter,” which is a monitoring system that detects gunshots via sensors around NYC and then alerts the Police Department. Given that the shots were identified via the shot spotter, PO Gromling did not believe that there were any witnesses or specific identifying information related to the wanted individual(s).

PO Gromling corroborated § 87(2)(b) claim that he did not commit a traffic infraction, stating that § 87(2)(b) vehicle was stopped solely in connection to the shots fired. The fact that § 87(2)(b) was not issued a summons for any traffic infractions supports this. § 87(2)(g)

People v. Sobotker, 43 N.Y.2d 559 (1978) (Board Review 25). To stop a moving vehicle, officers must have reasonable suspicion that its occupants had been, are then, or are about to be engaged in a crime. The reasonable suspicion must not be based on subjective knowledge, and should have “at least some demonstrable roots.”

§ 87(2)(g)

Allegation (B) Abuse of Authority: On July 11, 2018, at 154th Street and Shore Avenue in Queens, Sergeant Justin Ellis questioned § 87(2)(b)

Allegation (E) Abuse of Authority: On July 12, 2018, at Sutphin Boulevard and Arlington Terrace in Queens, Sergeant Justin Ellis questioned § 87(2)(b)

It is undisputed that after Sgt. Ellis approached § 87(2)(b) vehicle at the driver’s side on July 11, 2018, § 87(2)(b) informed him that he was a peace officer with the § 87(2)(b). It is also undisputed that Sgt. Ellis and the other officers had not confirmed § 87(2)(b) claim of being a registered peace officer at the time of both alleged questions.

§ 87(2)(b) stated that after he identified himself as a peace officer on July 11, 2018, Sgt. Ellis asked him if he was allowed to carry a firearm. § 87(2)(b) responded that he was legally allowed to, but the current commissioner of § 87(2)(b) did not want their peace officers to. Sgt. Ellis then asked § 87(2)(b) if there was a firearm in his vehicle.

After § 87(2)(b) license and registration were taken by the officers on July 12, 2018, Sgt. Ellis returned and asked him about a prior gun charge that was in his arrest history. § 87(2)(b) believed that Sgt. Ellis asked the question because he was fixated on the belief that § 87(2)(b) had a gun in his possession (**Board Review 03**).

§ 87(2)(b) provided a phone statement consistent with his in person CCRB statement for both interactions (**Board Review 04**).

During his CCRB interview, Sgt. Ellis stated that he did not recall if he asked § 87(2)(b) if there was a firearm in his vehicle on July 11, 2018. He further stated that during the interaction on July 12, 2018, § 87(2)(b) name was “run” in the NYPD system and it was determined that he had an extensive criminal history. Sgt. Ellis did not recall the details of § 87(2)(b) arrest history; however, he did recall that one of the arrests was made in relation to a shooting a few years prior. Sgt. Ellis did not ask § 87(2)(b) about a gun charge listed in his arrest history; however, he stated that he asked § 87(2)(b) if there was a gun in his vehicle (**Board Review 05**).

During his CCRB statement, PO Boudouris stated that on July 12, 2018, he was suspicious of § 87(2)(b) status of being a § 87(2)(b) peace officer because his ID was faded and § 87(2)(b) told him that he worked within NYC and “upstate,” given that PO Boudouris’ understanding was one can either work for NYC or NYS and not both. PO Boudouris saw § 87(2)(b) § 87(2)(b) ID that had a red background, indicating that § 87(2)(b) would have been authorized to carry a firearm if he was in fact a peace officer.

PO Boudouris also stated that it was determined that § 87(2)(b) had a long arrest history when a search was done. He did not recall if the arrest history listed a gun charge. PO Boudouris did not recall Sgt. Ellis asking § 87(2)(b) about any previous gun charges on his arrest history. (**Board Review 11**).

PO Gromling provided a statement consistent with Sgt. Ellis about the July 12, 2018 incident. PO Gromling ran the search of § 87(2)(b) name and determined that there was gun related arrest on his record; however, the charge was sealed so he was not allowed to view any details. The arrest was not recent, but PO Gromling did not recall how old the charge was. PO Gromling classified the charge as “not recent,” which he described as a charge being older than three to five years (**Board Review 02**).

PO Ward did not recall the July 12, 2018 incident (**Board Review 14**).

People v. Garcia, N.Y.3d 317 (2012) (**Board Review 10**). Founded suspicion must be present for an officer to justifiably inquire about weapons being inside of a vehicle during a traffic stop.

People v. De Bour, 40 N.Y.2d 210 (1976) (**Board Review 15**). For an officer to exercise the common-law right to inquire, there must exist founded suspicion that there is criminal activity. This founded suspicion is generated by knowledge possessed in the moment and any reasonable inferences. The frame work established in People v. De Bour for evaluating the constitutionality of police-initiated encounters applies with equal force to traffic stops.

§ 87(2)(g)

Allegation (C) Abuse of Authority: On July 12, 2018, at Sutphin Boulevard and Arlington Terrace in Queens, Police Officer Michael Boudouris stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation (D) Abuse of Authority: On July 12, 2018, at Sutphin Boulevard and Arlington Terrace in Queens, Police Officer Gregory Gromling stopped the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that on July 12, 2018, PO Boudouris and PO Gromling stopped § 87(2)(b) vehicle.

§ 87(2)(b) stated that just before being pulled over on July 11, 2018, he drove Northeast on Arlington Terrace in Queens, past Liverpool Street and Spa Place. There was a stop sign at each intersection and § 87(2)(b) came to a full stop at both stop signs. § 87(2)(b) turned left onto Sutphin Boulevard, signaling before doing so, at which time he was pulled over. When asked, § 87(2)(b) stated that his windows were tinted to allow 80% light visibility (**Board Review 03**).

§ 87(2)(b) provided a phone statement consistent with his in person CCRB statement (**Board Review 04**).

§ 87(2)(a) Gen.Mun. §50-H(3)

The investigation obtained photos of § 87(2)(b) vehicle (**Board Review 08**) (**Board Review 09**). In the photos provided, the front windshield and front driver's side windows appear to be tinted. The photos were taken in bright daylight; however, the windows are noticeably tinted and the inside of the vehicle is obscured.

During his CCRB statement, PO Boudouris stated that he observed § 87(2)(b) vehicle fail to stop at two stop signs and have "excessively" dark tints on the windows of his vehicle (**Board Review 11**). At the time the decision was made to stop § 87(2)(b) vehicle, PO Boudouris was not aware that PO Gromling and other officers stopped his vehicle the night before.

In his CCRB statement, PO Gromling stated that upon his and PO Boudouris' observation of § 87(2)(b) vehicle, they saw that the vehicle had window tints beyond the legal limit. Prior to approaching and seeing § 87(2)(b) PO Gromling did not know or have reason to believe that the vehicle was once again occupied by § 87(2)(b) (**Board Review 06**).

PO Boudouris' BWC footage of the July 12, 2018 vehicle stop depicts PO Boudouris inform § 87(2)(b) that he was stopped because he "rolled through" two stop signs and the vehicle's window tints were too dark, almost immediately after approaching (at 34 seconds). Neither PO Boudouris nor any other officer are depicted testing the window tints on § 87(2)(b) vehicle during the interaction (**Board Review 01**).

PO Gromling's BWC footage of the July 12, 2018 vehicle stop did not depict PO Gromling, PO Boudouris, or any other officer test the window tint percentage on § 87(2)(b) vehicle (**Board Review 02**).

§ 87(2)(g)

People v. Robinson, 97 N.Y.2d 341 (**Board Review 12**). Absent of established probable cause, officers are justified in effectuating a vehicle stop if credible facts are articulated to show they had a reasonable basis to believe a law was being violated.

NYS VTL § 375 – 12(b)(1) and (2) (**Board Review 13**). No person shall operate any vehicle with a front windshield and side windows adjacent to the driver's seat that allow less than 70% light transmittance.

§ 87(2)(g)

§ 87(2)(g)

Allegation (F) Abuse of Authority: On July 12, 2018, at Sutphin Boulevard and Arlington Terrace in Queens, Sergeant Justin Ellis threatened to arrest § 87(2)(b)

§ 87(2)(b) stated that after Sgt. Ellis spoke with the Commissioner of § 87(2)(b) Sgt. Ellis walked over to his vehicle and told him his vehicle needed to be searched. Sgt. Ellis asked § 87(2)(b) to get out of the car a total of two times, and § 87(2)(b) said no twice. After the second time, Sgt. Ellis told him that if he did not exit the vehicle he would be arrested.

People v Forbes, 283 A.D.2d 92 (2001) (**Board Review 25**). Upon making a valid stop of a motor vehicle for a traffic violation, the police may order the driver and all passengers out of the vehicle until the stop is concluded.

New York State Vehicle Traffic Law § 1102 (**Board Review 27**). No person shall fail or refuse to comply with any lawful order or direction of any police officer.

§ 87(2)(g)

Allegation (G) Abuse of Authority: On July 12, 2018, at Sutphin Boulevard and Arlington Terrace in Queens, Sergeant Justin Ellis searched the vehicle in which § 87(2)(b) **was an occupant.**

It is undisputed that § 87(2)(b) presented his § 87(2)(b) ID card to the officers, but they were suspicious about the validity because the ID was partially faded. It is also undisputed that the officers contacted the Commissioner of the § 87(2)(b) and confirmed that § 87(2)(b) was a peace officer with their agency. Finally, it is undisputed that the search of the vehicle occurred after the officers confirmed § 87(2)(b) was not lying about his status as a peace officer.

§ 87(2)(b) stated that Sgt. Ellis told him his vehicle needed to be searched and asked him to exit the vehicle. After Sgt. Ellis threatened to arrest him, he got out of the vehicle because he did not want to be arrested; however, he told the officers once again that he did not give permission for his vehicle to be searched. Sgt. Ellis and PO Boudouris searched the main cabin of the vehicle, including the glove compartment and arm rest, and the trunk of the vehicle for approximately five minutes (**Board Review 03**).

§ 87(2)(b) provided a phone statement consistent with his in person CCRB statement (**Board Review 04**).

§ 87(2)(a) Gen.Mun. §50-H(3)

Sgt. Ellis stated that after the vehicle stop on July 11, 2018, he learned that a white sedan was believed to be connected to the shooting that occurred that evening. He did not have a description of the involved individual(s) or information regarding what role the white sedan played in the incident.

Sgt. Ellis also stated that upon arriving on scene, PO Boudouris and PO Gromling did not inform him that they made any observation that led them to believe § 87(2)(b) had a firearm in his vehicle. Sgt. Ellis did not make any observations on his own that led him to believe § 87(2)(b) had a firearm in his vehicle. After he confirmed § 87(2)(b) status as a peace officer, Sgt. Ellis told § 87(2)(b) that he needed to check the vehicle to ensure that there was not a gun inside. § 87(2)(b) allowed the officers to search the vehicle. Sgt. Ellis stated that he, PO Boudouris, and PO Gromling searched the vehicle (**Board Review 05**).

PO Boudouris stated that he believed there was a “good chance” that § 87(2)(b) had a gun in the vehicle because the vehicle was a white sedan like the one believed to be connected to the shooting and § 87(2)(b) ID had a red background, indicating he would have been authorized to carry a firearm if he was a peace officer. He had this belief after Sgt. Ellis confirmed the validity of § 87(2)(b) ID. Sgt. Ellis spoke with § 87(2)(b) regarding searching the vehicle. PO Boudouris did not recall the content of that conversation (**Board Review 11**).

PO Ward did not recall the incident under investigation (**Board Review 14**).

People v. Battaglia, 86 N.Y.2d 755 (1995) (**Board Review 16**). During a vehicle stop initiated by the observation of traffic violation, officers must have a founded suspicion that criminal activity is afoot in order to request permission to search a vehicle.

People v. De Bour, 40 N.Y.2d 210 (1976) (**Board Review 15**). Founded suspicion is generated by knowledge possessed in the moment and any reasonable inferences that would lead an officer to believe that criminal activity is afoot.

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been a party to two CCRB complaints and has been named as a victim in four allegations (**Board Review 17**):
 - § 87(2)(b)
 -
- Sgt. Ellis has been a member of service for 11 years and has been a subject in 11 CCRB complaints and 29 allegations, of which three allegations were substantiated (see officer history):
 - 200816433 involved substantiated allegations of Abuse of Authority - Retaliatory Summons and Abuse of Authority - Stop against Sgt. Ellis. The Board recommended Command Discipline and the NYPD imposed Instructions.
 - 201405893 involved a substantiated allegation of Abuse of Authority – Stop against Sgt. Ellis. The Board recommended Command Discipline B and the NYPD imposed Command Discipline A.
 - § 87(2)(g)
- PO Gromling has been a member of service for four years and has been a subject in two CCRB complaints and five allegations, none of which were substantiated. § 87(2)(g)
- PO Boudouris has been a member of service for five years and has been a subject in three CCRB complaints and ten allegations, none of which were substantiated. § 87(2)(g)
- PO Ward has been a member of service for 10 years and has been a subject in three CCRB complaints and five allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming violations of his civil rights and bodily injury to his hand and ankle (**Board Review 18**). The sought compensation amount is not listed in the Notice of Claim. A 50-H hearing was held on § 87(2)(b), and can be found at **Board Review 07**.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: **09**

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date